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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CR No. CR 10-429 JW
)	
Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORANDUM
v.)	
)	Hearing Date: March 15, 2011
DYLAN CARLE STAUB,)	Time: 1:30 p.m.
)	Judge: Hon. James Ware
Defendant.)	

UNITED STATES' SENT. MEM.
CR 10-429 JW

I.
INTRODUCTION

The United States respectfully requests that the Court accept the Plea Agreement entered into by the parties, and sentence the defendant to 65 months imprisonment followed by five years of supervised release.

II.
BACKGROUND AND STATEMENT OF FACTS

The defendant has plead guilty to a violation of 21 U.S.C. § 841. (PSR ¶¶ 1-3.) The defendant has admitted the following facts in support of his plea:

On February 4, 2010, the defendant possessed more than 900 marijuana plants and approximately 9 kilograms of processed marijuana in his residence at 201 Chula Vista Drive, San Rafael, California. He possessed the marijuana with the intent to deliver it to other persons by selling it. At the time he possessed the marijuana, the defendant also possessed five handguns in his residence. (Plea Agreement ¶ 2.)

The defendant further agreed and stipulated that the total amount of marijuana attributable to him for purposes of relevant conduct (as calculated pursuant to United States Sentencing Guidelines section 2D1.1(c) and Note (E)) is 100 kilograms. (*Id.*)

III.
LEGAL STANDARD AT SENTENCING

Under Ninth Circuit case law, the Court should impose a sentence sufficient, but not greater than necessary, to reflect the purposes of sentencing that Congress identified in 18 U.S.C. § 3553(a)(2). *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). The Court should begin the process of determining an appropriate sentence by calculating the correct guidelines range. *Carty*, 520 F.3d at 991.

Although the guidelines are not binding, they “reflect a rough approximation of sentences that might achieve section 3553(a)’s objectives.” *United States v. Rita*, 127 S. Ct. 2456, 2464 (2007). The guidelines range will be the starting point and the initial benchmark for the sentence. *Carty*, 520 F.3d at 991. The Court should keep the guidelines range in mind

throughout the process, allow the parties to argue for a sentence they believe is appropriate, and consider the factors identified in 18 U.S.C. § 3553(a). *Id.*

If the Court imposes a sentence outside the guidelines range, it should ensure that its justification for deviating from the range is sufficiently compelling to support the degree of variance in the sentence that it imposes. *Carty*, 520 F.3d at 991. The Court should make an individualized determination based on the facts of each case. *Id.* The Court, however, is not required to raise every possible relevant issue sua sponte. *Id.*

IV. 65 MONTHS IN PRISON IS THE APPROPRIATE SENTENCE

A. The Applicable Guidelines Range Is 70-87 Months In Prison

1. The Correct Guidelines Calculation Is Level 25

The parties agree that the following sentencing guidelines calculation is correct:

Base offense level	USSG §2D1.1(a)(5), (c)(7)	26
Defendant possessed a dangerous weapon	USSG §2D1.1(b)(1)	+2
Defendant accepted responsibility	USSG §3E1.1(a)+(b)	-3
Total offense level		25

(Plea Agreement, ¶ 7.) The Probation Office calculates the defendant as having a Base Offense Level of 28. (PSR ¶ 23.) The Probation Office's calculation differs from that of the parties because the Probation Office's calculation of the Base Offense Level includes the weight of cocaine and psilocybin mushrooms seized as part of this investigation. The government does not believe that the weight of these narcotics should count toward the defendant's sentence.

With respect to the cocaine, the Probation Office includes 1 kilogram of cocaine which was seized from a vehicle driven by Benjamin Pringle as he drove away from the defendant's residence. The defendant was not charged with possession of this cocaine, although Benjamin Pringle was in a separate (but related) case. Mr. Pringle plead guilty to a violation of 21 U.S.C. § 841 in connection with that cocaine, and is currently serving a 60 month sentence. (PSR ¶ 2.)

1 The government does not believe that the facts before the Court support holding the defendant
2 responsible for the cocaine seized from Mr. Pringle.

3 The Probation Office also includes 6 grams of cocaine and 90.8 grams of psilocybin
4 mushrooms located in the defendant's house in its calculation of the Base Offense Level. The
5 government also does not believe that these narcotics should be included. All available evidence
6 supports the conclusion that the cocaine and mushrooms found in the defendant's house were for
7 his personal use. (Indeed, roughly half of the cocaine was found in lines on a mirror in the
8 defendant's bathroom, apparently set out for immediate consumption.) The government does not
9 believe that the facts of this case support including cocaine and psilocybin mushrooms intended
10 for the defendant's personal use in calculating the weight of the marijuana that the defendant
11 admittedly intended to distribute. As there is no evidence that the cocaine and mushrooms were
12 intended to be distributed, the government does not believe that they should be included as
13 "relevant conduct" for a drug trafficking offense.

14 If the converted weight of the cocaine and mushrooms are removed from the Probation
15 Office's calculations, the total remaining weight of marijuana is 126.5 kg. (PSR ¶ 22.)
16 Although this weight is 26.5 kg higher than the amount admitted by the defendant in his Plea
17 Agreement (Plea Agreement ¶ 2), it results in the same Base Offense Level of 26. The
18 government therefore submits that 26 is the correct Base Offense Level, and that 25 is the correct
19 Total Offense Level.

20 **2. The Defendant's Criminal History Category Is CHC III**

21 The government agrees with the U.S. Probation Office's calculation of the defendant's
22 criminal history, resulting in a Criminal History Category of II. (PSR ¶¶ 34-42.)

23 **3. The Correct Guidelines Range Is 70-87 Months In Prison**

24 The Guidelines Range provided for Offense Level 25 and Criminal History Category III
25 is 70-87 months in prison. *See* U.S.S.G., Sentencing Table. The sentencing range lies in Zone D
26 of the Sentencing Table, and the sentence must therefore be served in prison. *Id.*

27 **B. A Prison Sentence Of 65 Months Satisfies The 3553(a) Factors**

1 Analysis of the Guidelines and § 3553(a) shows that 65 months in prison is a reasonable
2 and appropriate sentence in this case, and for this defendant.

3
4 **1. 60 Months In Prison Is An Appropriate Sentence Considering The Nature
5 And Circumstances Of The Offense, And The Defendant's History And
6 Characteristics – § 3553(a)(1)**

7 **a. The Nature and Circumstances of the Offense**

8 In this case, the defendant plead guilty to possessing substantial quantities of marijuana,
9 and to possessing firearms in connection with the marijuana. (Plea Agreement, ¶ 2.) This are
10 serious offenses, and deserving of a substantial prison term. The relatively high Guidelines
11 Offense Level accounts for this. (See above.)

12 However, the defendant did not use or attempt to use a firearm in the commission of the
13 offense, and the defendant promptly accepted responsibility for this offense. This willingness to
14 accept responsibility for his conduct should be factored in the defendant's favor in sentencing.

15 **b. The Defendant's History And Characteristics Warrant A 65 Month Sentence**

16 The defendant's criminal history reflects that a Criminal History Category of III over-
17 represents the defendant's criminal history. Specifically, the defendant receives criminal history
18 points for two convictions sustained in 2009, a misdemeanor battery conviction and a
19 misdemeanor conviction for driving without a license. (PSR ¶¶ 38-39.) Although the driving
20 offense is technically counted under U.S.S.G. § 4A1.2(c)(1)(A), it seems inequitable to increase
21 the defendant's Criminal History Category from II to III, and his resultant Guidelines Range
22 from 63-78 to 70-87 for what is, in essence, a traffic ticket.

23 Were the defendant to have a Criminal History Category of II, a sentence of 65 months
24 would be within the Guidelines Range. The government believes this to be an appropriate
25 sentence.

The government believes that 65 months imprisonment, followed by a five year term of supervised release, should deter the defendant from further illegal activity. Although the defendant has spent time in custody before, he has never served a period of imprisonment even approaching this length. Moreover, when the defendant is released, he will be subject to the monitoring of the U.S. Probation Office for five additional years.

CONCLUSION

DATED: March 9, 2011

/s/
 MATTHEW L. McCARTHY
 Assistant United States Attorney